IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No._148 of 1998.

Judgement reserved on:9.5.2007

Date of decision: 11.6.2007.

HPMC **…….Appellant**

Vs.

M/s. Khemka Cotainers(P) Ltd. **…. Respondent.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting? ***Yes***

For the Appellant : **Mr.Shrawan Dogra, Advocate with Mr. Vikram Thakur, Advocate.**

For the Respondent : **Mr. Chander Paul Sood, Advocate with Mr. Debinder Ghosh, Advocate**

Kuldip Singh, Judge.

The defendant is in appeal against judgment, decree dated 1.4.1998 passed by learned District Judge, Shimla in C.S. No.121-S/1 of 1995/94, decreeing the suit of the plaintiff for a sum of Rs.2,09,241/- with costs and future interest at the rate of 18% per annum from the date of filing of the suit to the date of payment. The parties are referred in the same manner as in the impugned judgment, decree.

The facts in brief are that the plaintiff had been dealings with the defendant for supply of cartons and upto 31.3.1990 a sum of Rs.1,32,021/- was due to plaintiff from defendant. In April, 1990, tenders were invited by defendant for supply of 285000 cartons. The

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Whether the reporters of the local papers may be allowed to see the Judgment? Yes

plaintiff also submitted a tender and informed the defendant in writing that P.K. Bajaj, General Manager (Works) was authorized to negotiate and enter into an agreement on behalf of the plaintiff with defendant but P.K. Bajaj, never executed any agreement in favour of the defendant for supply of the cartons. One Arun Gupta who was not authorized by the plaintiff to act on its behalf or to represent it was persuaded by the employees of the defendant and got his signatures on the supply order for the supply of Telescopic corrugated regular cartons for packing apples. On the strength of said supply order, the defendant started pressurizing the defendant to supply Telescopic corrugated regular cartons. The plaintiff had already made commitments to other customers for the supply of cartons during the months of August and September and therefore, it was not in a position to meet the demand of the defendant.

The plaintiff approached the defendant to pay the amount of Rs.1,32,021/- which was due to it as on 31.3.1990. The plaintiff got the reply that a sum of Rs.98,995/- had been forfeited out of the aforesaid amount on account of non-performance of the contract for supply of 285000 Telescopic corrugated regular cartons, allegedly executed by Arun Gupta on behalf of the plaintiff. The defendant further informed the plaintiff that another sum of Rs.14,243.75 had been deducted on account of price fall clause in the agreement of the year 1987 and a sum of Rs.2074.80 had been adjusted as penalty for supply of 1140 cartons, without inspection. The plaintiff informed the defendant in writing that it had not entered into an agreement for the supply of 285000 Telescopic corrugated regular cartons nor Arun

Gupta was authorized to act on behalf of the plaintiff and as such the question of forfeiture of any amount of money on account of the non-performance of the said contract could not arise. It was further informed by the plaintiff that price fall clause was not attracted as the demand of the defendant for supply of cartons had been made in full before some more cartons were offered for sale at a reduced price . The defendant was also told that 1140 cartons despatched without inspection had not been returned but had been utilized by the defendant and as such the defendant had no authority to make any deductions on this count out of the money due to the plaintiff. The plaintiff thus, filed a suit for recovery of the amount due, i.e. Rs.1,32,021/- and Rs.77,220/- on account of interest at the rate of 18% per annum and future interest at the same rate.

The defendant contested the suit and took the preliminary objection of limitation. On merits it has been submitted that in April, 1990, the plaintiff submitted a tender and after negotiations Arun Gupta the representative of the plaintiff accepted an order for supply of 285000 Telescopic corrugated regular cartons on 31.8.1990. At the time of tender in April, 1990, the plaintiff had authorized the defendant to retain about Rs.1,56,000/- out of the money due to it on account of cartons supplied upto 31.3.1990 by way of security money for the performance of the contract which might be entered into and executed between the parties in the event of acceptance of the said tender.

The plaintiff failed to supply the cartons as per terms of the supply order duly accepted by Arun Gupta on behalf of plaintiff and so

a sum of Rs.98,995/- out of the money due to the plaintiff has been forfeited. It was an agreement between the plaintiff and defendant for the supply made prior to April, 1990 that in case the plaintiff sold cartons of the same specifications at a reduced price to other persons or even to the defendant in excess of the agreed quantity of cartons, the price in respect of the agreed quantity of cartons shall also be reduced accordingly. The plaintiff after the execution of the agreement supplied cartons at a reduced rate and so the clause regarding price fall became operative and a sum of Rs.14,243.75/- has been adjusted against the money due to the plaintiff on this count. The plaintiff prior to April, 1990 had supplied 1140 cartons without inspection against the stipulation in the contract that no cartons would be supplied without prior inspection. Therefore, a sum of Rs.2074.80/- has been deducted in terms of the contract on account of supply of 1140 cartons without inspection. It has been submitted that after making deductions on the aforesaid three counts, the remaining amount of Rs.16,807.45/- had been paid to the plaintiff through cheque No.733997 dated 18..6.1992 drawn on the State Bank of Patiala.

The following issues were framed :-

1. *Whether the plaintiff firm is entitled to a sum of Rs.2,09,241/- from the defendant Corporation ?...OPP*
2. *Whether the plaintiff firm is entitled to interest at the rate of 18 percent per annum as alleged? ..OPP*
3. *Whether forfeiture of amount of Rs.98,995/- by the defendant Corporation was justified or not?...O.P. Parties.*
4. *Whether the suit is barred by limitation, as alleged?....OPD*.

5. *Relief*.

The learned District Judge decided issue No.1 in favour of the plaintiff. In issue No.2 it has been held that plaintiff is entitled to interest at the rate of 18% per annum. The issue No.3 has been decided against the defendant and under issue No.4, it has been held that the suit is within limitation.

The learned District Judge decreed the suit as noticed above. The defendant is in appeal against the impugned judgment and decree.

I have heard the learned counsel for the parties and have also gone through the record.

The learned counsel for the defendant has submitted that the Court below has erred in decreeing the suit of the plaintiff. The defendant is justified in forfeiting/adjusting Rs.98,995/- Rs.14,243.75/- and Rs.2074.80/- referred above. The defendant has paid remaining amount of Rs.16,807.45/- to the plaintiff vide cheque dated 18.6.1992 and nothing is payable by the defendant to the plaintiff. The learned District Judge has not properly appreciated the evidence on record. The plaintiff is not entitled to Rs.1,32,021/- on account of price of material supplied and Rs.77,220/- on account of interest. There was no agreement for payment of interest at the rate of 18% per annum. The suit is time barred. The learned counsel for the plaintiff has supported the impugned judgment, decree.

Rajiv Khemka, Director of the plaintiff has appeared as PW-1. He has stated that in April, 1990 accounts were settled and Rs.1,32,021/- was found due to the plaintiff from defendant. This

amount was kept as security by the defendant in terms of the tender Ex.PD submitted in the year 1990. The plaintiff had authorized P.K. Bajaj to submit the tender vide authorization Ex.PE but he did not execute any agreement in favour of the defendant. The tender was not acted upon and no agreement was signed between the parties in terms of the tender, therefore, plaintiff did not supply any cartons to the defendant on the basis of tender Ex.PD nor the plaintiff was bound to supply any cartons under the tender to defendant for want of execution of the agreement. The defendant acknowledged a sum of Rs.1,32,021/- was payable to plaintiff vide Ex.DF dated 25.5.1992, deduction of Rs.14,243.75/- on account of price fall is unauthorized because there was no agreement for such deduction. Some material was supplied without inspection to the defendant as per the instructions of the employees of the defendant and therefore, defendant is not authorized to make any cut on account of supply of such cartons. The defendant did not issue any notice to the plaintiff before making cut from the amount due to the defendant on account of material supplied without inspection. The plaintiff issued notices Ex.PG and Ex.PH to the defendant before filing the suit. The reply of defendant is Ex.PJ. In the bills, the plaintiff used to mention that in case the payment was not made within 30 days, the defendant would be liable to pay interest at the rate of 18% per annum. The bills against which material was supplied are Ex.PK-1 to Ex.PK-4. Ex.PL is the copy of terms and conditions of plaintiff for tender Ex.PD. In cross-examination he has stated that he has not brought the entire record of the authorization of the officer of plaintiff dealing with the

defendant. He has denied that Arun Gupta was authorized to represent the plaintiff. He has also denied that on 18.6.1992 the plaintiff received Rs.16,807.45/- from defendant in full and final settlement of the claim of plaintiff and the account stood finally closed.

DW-1 Amar Dutt Sharma, Marketing Assistant of the defendant has proved Ex.D-1 to Ex.D-29 communications, documents pertaining to the case. He has stated that the defendant did not have any running or open account with plaintiff. Rs.16,807.45/- due to the plaintiff was remitted to the plaintiff by cheque. This amount was not encashed by the plaintiff, therefore, this money is still outstanding in the account of the defendant. The abstract of the account of the plaintiff with defendant is Ex.D-13. Arun Gupta was dealing with the defendant on behalf of the plaintiff. This is the entire evidence led by the parties.

The plaintiff has claimed Rs.1,32,021/- due amount to it from defendant as on 31.3.1990. The perusal of letter Ex..PF issued by Assistant Marketing Officer of the defendant and addressed to plaintiff is clear to the effect that an amount of Rs. 1,32,021/- was due to the plaintiff from defendant. It is a different matter that vide Ex.PF, the defendant has adjusted some amounts of plaintiff, but fact remains that vide Ex.PF, defendant has admitted that an amount of Rs.1,32,021/- was payable by the defendant to the plaintiff. Now, the question is whether defendant is entitled to make any adjustment/deduction from the due amount of Rs.1,32,021/- of

plaintiff. The defendant vide Ex.PF has adjusted Rs.14,243.75/-, Rs.2074.80/- and Rs.98,995/- which were due to the plaintiff.

The adjustment of Rs.14,243.75/- is against the supply order of three lacs Kullu Dabas which was placed with the plaintiff on 30.4.1987 at the rate of Rs.7.20 paise per carton. The agreement under which that order was placed allegedly provided that in case the plaintiff supplied cartons at the lower rate to the defendant or any other person, the price for the cartons ordered vide supply order dated 30.4.1987 would be reduced. It is alleged that in July, 1987 the plaintiff supplied cartons at the rate of 6.90 paise per piece and therefore, a sum of Rs.14,243.75/- had been deducted on account of price fall clause. The case of the plaintiff is that the price fall clause did not come into operation because it was to apply only if cartons were sold at reduced rate before completely meeting the demand of the plaintiff for supply of three lacs cartons raised on 30..4.1987. The plaintiff has alleged that cartons at the reduced rate were supplied after supplying the entire quantity of three lacs cartons ordered by defendant vide supply order dated 30.4.1987. The agreement on the basis of which the supply order dated 30.4.1987 was placed has not been produced by the defendant. In absence of agreement, it is not possible to ascertain as to what was the price fall clause. The plaintiff has asserted that the aforesaid clause provided that in case cartons were sold at lower rate before fully and completely complying with the supply order placed by the defendant, the price of cartons supplied under the order dated 30.4.1987, would also proportionately be reduced. The defendant in the written statement does not deny

this. The defendant has not led evidence that some cartons out of three lacs cartons ordered on 30.4.1987 were supplied after the plaintiff sold some cartons at a lower rate. In absence of evidence, it cannot be said that the plaintiff had supplied cartons at a rate lower than what was agreed with the plaintiff before making the entire supply of three lacs cartons. The defendant is supposed to have the record of supply as well as also the terms and conditions under which the supply order dated 30.4.1987 was placed. In absence of evidence, it is not possible to hold that deduction of Rs.14,243.75/- made by defendant is justified.

The defendant has adjusted another sum of Rs.2074.80/- from the due money of the plaintiff. This deduction is on account of supply of 1140 cartons by plaintiff to defendant without inspection. This is not the case of the defendant that supply of these cartons was rejected by the defendant or these cartons were returned to the plaintiff. The only inference which can be drawn that supply of 1140 cartons was accepted by the defendant and these cartons were utilized by the defendant. Therefore, defendant is liable to pay the price of 1140 cartons and for that reason the defendant has no right to deduct Rs.2074.80/-.

The most contentious point is whether the defendant is entitled to forfeit Rs.98,995/- from the due amount of Rs.1,32,021/- of plaintiff for not honouring supply order of 2,85000 cartons allegedly placed vide Ex.D-4 dated 31.8.1990. The case of the plaintiff is that infact supply order Ex.D-4 was not issued at the instance of plaintiff, Arun Gupta was not the representative of plaintiff for signing supply

order Ex.D-4. P.K. Bajaj was the authorized representative of the plaintiff for submitting the tender as per Ex.PE. The supply order Ex.D-4 was not binding on the plaintiff and for not executing supply order Ex.D-4, the defendant could not forfeit any amount from the money of the plaintiff lying with the defendant. He has alternatively submitted that even if Ex.D-4 is assumed to be the supply order issued by defendant at the instance of plaintiff in that case also the defendant could not forfeit Rs.98,995/- out of the money of plaintiff lying with defendant without proof of loss, damage suffered by the defendant for not supply of cartons in compliance to supply order Ex.D-4.

The supply order Ex.D-4 is dated 31.8.1990. It is signed by Managing Director of defendant as well as Arun Gupta on behalf of the plaintiff. The letter Ex.D-9 dated 3.9.1990 is the message from plaintiff to the Managing Director of the defendant wherein reference of phone, telegram dated 1.9.1990 and letter dated 31.8.1990 has been made. In Ex.D-9 it has been stated that the plaintiff has very tight schedule and the plaintiff is not in a position to supply cartons as per delivery schedule of the defendant. The plaintiff has not explained that Ex.D-9 pertains to some other supply order and not supply order Ex.D-4. The proximity of time when Ex.D-9 was issued connects Ex.D-9 with supply order Ex.D-4. In Ex.D-9 the plaintiff has no where stated that the supply order Ex.D-4 was not issued at the instance of plaintiff or Arun Gupta signatory of Ex.D-4 was not authorized representative of the plaintiff. In Ex.D-13 dated 7.9.1990 the plaintiff has referred the visit of B.K. Semta , Regional Manager

of the defendant on 4th September, 1990 for acceptance of order. The plaintiff suggested conditions referred in Ex.D-13 for honouring the supply order. In Ex.D-13 also the plaintiff has no where taken the stand that supply order Ex.D-4 was not issued at the instance of plaintiff and Arun Gupta signatory of the supply order was not authorized to sign the supply order and to represent the plaintiff. The notice dated 11.1.1993 Ex.PH issued by the advocate of the plaintiff to the Chief Marketing Officer of the defendant clearly admits approval of contract of supply as entered between defendant and plaintiff on 31.8.1990 and placing of supply order of cartons which was to be made latest by 15.9.1990. Notice dated 11.1.1993 has been referred in para-9 of the plaint also . The clause-J of supply order Ex.D-4 stipulates that the entire supply of the cartons will be completed before 15.9.1990. In notice dated 11.1.1993 there is no reference that Arun Gupta was not authorized to represent plaintiff at the time of signing supply order Ex.D-4. Therefore, it is proved that the supply order Ex.D-4 was issued at the instance of plaintiff and Arun Gupta signatory of supply order was authorized to represent the plaintiff for issuing supply order Ex.D-4. The submission of the plaintiff that supply order Ex.D-4 was not binding on plaintiff, as it was not issued at the instance of the plaintiff nor it was signed by the representative of the plaintiff is against the material on record and therefore rejected. It is held that supply order Ex.D-4 was issued with the consent, approval of plaintiff. The plaintiff is bound by supply order Ex.D-4.

The question is whether in presence of supply order Ex.D-4, the defendant is entitled to forfeit Rs.98,995/- from the due amount of the plaintiff lying with the defendant. The clause N of supply order Ex.D-4 authorises the defendant to forfeit earnest money lying with the defendant in case party fails to supply cartons as per terms and conditions specified in the supply order. A submission has been made on behalf of the plaintiff that in the tender Ex.PD amount mentioned is EMD (Earnest Money deposit) but in fact it is security for due performance of the contract. The learned counsel for plaintiff has submitted that nomenclature used in Ex.PD is not to be seen but what is to be seen is the actual purpose for which the amount was kept by the plaintiff with the defendant. He has submitted that there is no question of paying earnest money by the plaintiff to the defendant in as much as cartons were to be purchased by the defendant not by plaintiff. The amount was lying in deposit with the defendant with the purpose to compel the plaintiff to execute the contract of supply of cartons completely. On completion of contract, the defendant was to make the payment and also to release the security amount. He has submitted that the defendant could not forfeit any amount from the security without proof of actual loss, damage. He has also submitted that even in the case of earnest money where forfeiture is penal the earnest money cannot be forfeited without proof of loss, damage. For this submission he has taken the help of Section 74 of the Contract Act which read as follows:-

> "*Compensation for breach of contract where penalty stipulated for.-When a contract has been broken, if a sum is named in the contract as the amount to be paid in case*

of such breach, or if the contact contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the mount so named or, as the case may be, the penalty stipulated for.

Explanation- A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

Explanation – When any person enters into any bail-bond, recognizance or other instrument of the same nature, or, under the provisions of any law, or under the orders of the Central Government or of any State Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation- A person who enters into a contact with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested".

The submission of the learned counsel for the plaintiff is that keeping in view Section 74 of the Contract Act amount of Rs.1,32,021/- was the outer limit of forfeiture but within this limit without proof of loss, damage the defendant is not entitled to any compensation. The defendant cannot forfeit Rs.98995/- from Rs.1,32,021/- of plaintiff lying with defendant. He has relied ***Maula Bux vs. Union of India AIR 1970 SUPREME COURT 1955.*** The Hon'ble Supreme Court In paras 4 and 7 of the report has held as follows:-

***4**."Under the terms of the agreements the amounts deposited by the plaintiff as security for due performance of the contracts were to stand forfeited in case the plaintiff neglected to perform his part of the contract. The High Court observe that the deposits so made may be regarded as earnest money. But that view cannot be accepted. Accordingly to Earl Jowitt in 'The Dictionary of English Law' at P.689.- 'Giving an earnest or earnest-money is a mode of signifying assent to a contract of sale or the like by giving to the vendor a nominal sum (e.g. a shilling) as a token that the parties are in earnest or have made up their minds'. As observed by the Judicial Committee in Chairanjit Singh vs. Har Swarup , AIR 1926 P.C.1:*

"Earnest-money is part of the purchase price when the transaction goes forward: it is forfeited when the transaction falls through, by reason of the fault or failure of the vendee."

In the present case the deposit was made not of a sum of money by the purchaser to be applied towards part payment of the price when the contract was completed and till then as evidencing an intention on the part of the purchaser to buy property or goods. Here the plaintiff had deposited the amounts claimed as security for guaranteeing due performance of the contracts. Such deposits cannot be regarded as earnest-money".

***7**. Forfeiture of earnest money under a contract for sale of property –moveable or immovable – if the amount is reasonable, does not fall within Section 74. That has been decided in several cases: AIR 1926 .C.I : Roshan Lal vs. Delhi Cloth and General Millas Co. Ltd., Delhi, (1911) ILR 33 All 166; Muhammad Habibullah v. Muhammad Shafi, ILR 41 All 324 = (AIR 1919 All 265); Bishan Chand v. Radha Kishan Das, (1897) ILR 19 All 489. These cases are easily explained, for forfeiture of a*

reasonable amount paid as earnest money does not amount to imposing a penalty. But if forfeiture is of the nature of penalty, Section 74 applies. Where under the terms of the contract the party in breach has undertaken to pay a sum of money or to forfeit a sum of money which he has already paid to the party complaining of a breach of contract, the undertaking is of the nature of a penalty."

In ***H.P. Forest Corporation v. Hari Chand. Indian Law Reports (H.P. Series) (1983) 414,*** this Court In para-31 has held as follows:-

" *In any case whether it is compensation or the penalty, I have already held that under section 74 of the Contract Act the plaintiff is entitled to an amount which is proved to be a reasonable compensation for the loss/damages suffered by the plaintiff on account of the breach of agreement on the part of the defendant"*

In ***M/s. Variety Body Builders a partnership firm at Baroda vs. The Union of India, AIR 1973 GUJARAT 256 (V 60 c 40),*** The High Court of Gujarat in para-13 has held as follows:-

"In ordinary course a security deposit is intended to be refunded and the amount in question is kept it, deposit only for the purpose of securing the due performance of the contract. The said amount is forfeited only when a breach of the contract occurs and results in a legal injury. Therefore, if the railway administration wants to forfeit that amount or a part thereof, the burden is upon it to show that necessary requirements for the forfeiture exists . In this case the plaintiff has come forward with a plea that the defendant is not entitled to forfeit any part of the amount of security deposit. In reply to this plea of the plaintiff, the defendant has merely relied upon the

contractual stipulations regarding forfeiture in case of breach of the contract. The result is that there is no issue seeking to prove whether the breach has resulted in any legal injury or any loss or damage to the railway administration. Now the law does not presume that a legal injury or loss and damage occurs the moment the contract is broken. The question whether a breach of contact has resulted in legal injury or actual loss or damage to the aggrieved party is essentially and wholly a question of fact. Therefore, so long as the facts necessary to prove this aspect of the matter are not pleaded, and so long as the parties do not get proper opportunity to prove their respective contentions on this aspect of the matter, it would not be possible for the court to hold that legal injury exists or that any damage or loss has occurred to the aggrieved party. By reference to the written statement I find that there is absolutely nothing in any paper thereof to show that the breach of the suit contract by the plaintiff has resulted in any legal injury…….. Not all the breaches of contracts result in loss, damage or injury and this would be more so, in case of commercial contracts where for varieties of reasons, the breach may result in profit or in a situation where there is neither any profit nor any loss. There is neither any profit nor any loss. Therefore, from the mere facts that the contract was broken by the other side, and that the remaining part of the contract was required to be performed either departmentally or by giving a new contract, the court cannot hold that the legal injury, which is contemplated by Section 74 of the Contract ct has occurred".

In State of U.P. vs. Chandra Gupta & Co., AIR 1977 ALLAHABAD 28, in para-18 it has been held:-

> *"After having heard counsel for the parties, we are inclined to accept the submission advanced on behalf of the respondent. Section 74 of the Indian Contract Act entitles a person to get reasonable compensation and does not entitle him to realize anything by way of penalty. If a contract is not duly performed but still no damage is suffered on account of non-performance, the promisee would not be entitled to get damages".*

The forfeiture of Rs.98995/- by the defendant is not automatic without proof of damage. The defendant is not entitled to forfeit any amount of plaintiff simply on the ground that cartons as per supply order Ex.D-4were not supplied by plaintiff. In absence of proof of damage for not supplying cartons, the defendant is not entitled to forfeit any amount. DW-1 has not stated anything what loss, damage the defendant has suffered when plaintiff did not honour the supply order Ex.D-4. In these circumstances, I am of the view that the forfeiture, of Rs.98,995/-, made by the defendant from the due amount Rs.1,32,021/- of the plaintiff is wrong, illegal and not binding on the plaintiff.

The plaintiff has claimed interest at the rate of 18% per annum on Rs.1,32,021/- . The plaintiff has not proved any contract between the parties which entitles the plaintiff to claim 18% interest per annum on the due amount from the defendant. The rate of interest on commercial transactions of the schedule banks at the relevant time has also not been proved. In the notice Ex.PH basis of 18% interest per annum has not been mentioned nor in the plaint basis of 18% interest has been disclosed except referring the notice. The interest at the rate of 18% per annum is very high keeping in

view the present rate of interest prevalent in the banks. In absence of proof of actual rate of interest or the basis of rate of interest in my opinion, the plaintiff is entitled to 9% interest per annum on Rs.1,32,021/- from 1.4.1990 till realization and not at the rate of 18% as allowed by the trial Court.

It has also been submitted by the defendant that the suit is time barred. It is not denied by defendant that on 31.3.1990 an amount of Rs.1,32,021/- was due to the plaintiff from defendant. The defendant on 25.5.1992 vide Ex.PF has admitted that Rs.1,32,021/- was due to the plaintiff from defendant. The defendant thus on 25.5.1992 has acknowledged the liability of plaintiff to pay Rs.1,32,021/-. The suit has been filed on 28.2.1994 within three years from the date of acknowledgement i..e. 25..5.1992. The suit is thus within limitation . It has been submitted by learned counsel for the defendant that Ex.P-F has not been proved to be made by the authorized representative of the defendant. This submission of learned counsel for the defendant is only noticed to be rejected . The whole defence of the defendant regarding forfeiture and deduction is based upon letter dated 25.5.1992 Ex.PF. It is no where the case of the defendant that Assistant Marketing Officer who has signed letter dated 25.5.1992 Ex.PF was not authorized competent to issue letter Ex.P-F. It is therefore, held that the suit is within limitation.

In view of the above discussion, the appeal is partly allowed. The impugned judgment and decree are modified. The suit of the plaintiff is decreed against defendant for a sum of Rs.1,32,021/- along with 9% simple interest on Rs. 1,32,021/- from 1.4.1990 till

realization of the decretal amount along with proportionate costs of the trial court as well as of this Court.

June 11,2007 **(Kuldip Singh)**
(sks) **Judge.**